IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 103 of 2005

In

Second Appeal No.67/2004

Shri Govind Hari Pagar .. Applicant

V/s

Shri Ramchandra Hari Pagar

and Ors. ...Respondents

Shri M.M.Sathaye for Applicant

Shri P.N.Joshi for Respondent

CORAM:A.S.OKA,J.

DATED:18th Feb. 2005

P.C.:-

1). Heard the learned Counsel appearing for the parties. My attention has been invited to paragraph no.3 of the order dated 18-10-2000 passed by the appellate Court during the pendency of the appeal. The said para 3 reads thus :-

> 3. Ultimately application Exh.5 is allowed while application Exh.12 is rejected. The respondents shall not disturb appellants possession over disputed western side 1/4th

portion out of Gat NO.265 till disposal of the appeal. All the same the appellant no.1 to deposit in court every year's income accruing to him out of the said disputed portion.

. The case of the applicant (Respondent no.1 in the Second Appeal) is that the appellants in second appeal are receiving net income of Rs.50,000/- per year. The learned Advocate for the applicant has invited my attention to the order dated 17-7-2003 which was passed after disposal of the appeal by the lower appellate Court directing the appellant to furnish security of Rs.10,000/-. He submitted that sum of Rs.10,000/- should be ordered to be deposited by the Applicants in this Court per year.

2. The application is contested by the Respondent nos 1 and 2 (Appellants) by filing the reply and in the said reply it is stated that they are earning net profit of about Rs.3,000/- to Rs.4,000/-.

3. The learned Counsel appearing for the applicant stated that during the pendency of the appeal a sum of Rs.6,000/- or more per year has been deposited by the Respondent nos.1 and 2.

4. Considering this submissions of the learned Counsel appearing for the parties, I pass the

following order

i. Till the disposal of the Second Appeal the Respondent nos.1 and 2 in this Civil Applicant(Appellants in Second Appeal) will deposit in the trial Court a sum of Rs.7500/- per financial year.

ii. The payment of Rs.7500/- will start from the financial year 2004-05.

iii. The amount for the year 2004-2005 to be deposited within one month from today.

iv. The amount for year from 2005-06 onwards shall be deposited in the trial Court on or before 30th June of every year.

v. As and when amounts are deposited by Respondent nos.1 and 2, the trial Court will invest the said amount in fixed deposit in any nationalised bank.

vi It is obvious that the deposit of the said amount by one Respondent nos.1 and 2 will be without prejudice to the rights and contentions of parties in Second Appeal.

vii Civil application is disposed of in above terms.

. Parties to act on the authenticated copy of this order..

w ( A.S.OKA,J.)